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**SECTION 38-39,  
HISTORIC AND CULTURAL RESOURCES PRESERVATION ORDINANCE**

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**ARTICLE I**

- (a) Statement of Intent.

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The intent of this section is to implement the Comprehensive Plan's goals to identify and document historical resources within the City, preserve and enhance historic structures within the residential districts of the city, preserve and enhance historic resources located in nonresidential zoning districts, maintain, enhance, and expand where appropriate, the city's publicly owned historic resources, enhance the preservation of all historic resources, and interpret and publicize the city's historic resources to educate the community and to create the basis and climate for historic preservation [This text may need to be modified, based on the ongoing Plan's update]. Further, it is the intent to provide a means by which the city council may recognize and protect historic, archaeological, architectural, cultural, and artistic heritage of the City of Falls Church; promote and protect the health, safety, comfort, recreation, prosperity, and general welfare of the community through the identification, preservation, and enhancement of buildings, structures, neighborhoods, landscapes, built features, places, and areas which have special historical, cultural, artistic, architectural or archaeological significance as provided by Section 15.2-2306 of the Code of Virginia, as amended.

It is hereby recognized that the deterioration, destruction or irrevocable alteration of said buildings, structures, landscapes, built features, places and areas may cause the permanent loss of unique resources which are of great value to current and future generations of the City of Falls Church, the Commonwealth of Virginia, and the nation, and that the special controls and incentives are warranted to ensure that such losses are avoided when possible. Regulations within the HCC district are intended to protect against the destruction of or encroachment upon such areas, structures, and premises; to encourage uses, which will lead to their continuance, conservation and improvement in accordance with the following purposes:

1. To preserve and improve the quality of life for residents of the City of Falls Church by protecting familiar and treasured visual elements.
2. To promote tourism and other economic benefits by protecting historical, architectural, archaeological and cultural resources attractive to visitors and thereby supporting local business and industry.
3. To stabilize and improve property values by providing incentives for the upkeep and rehabilitation of older structures and to encourage appropriate land use planning and development that will enhance both the economic viability and the historic character of the city.
4. To educate residents and tourists on the local cultural and historic heritage as embodied in the city and to foster a sense of pride in this heritage.
5. To promote local historic preservation efforts and to encourage the identification and nomination by their owners of qualified historic properties to the national Register of Historic Places and the Virginia Historic Landmarks Register.

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6. To promote the harmony of style, form, color, proportion, texture and material between buildings of historic design and those of more modern design.
7. To develop the historic areas, not in a vacuum, but as a vital area in which each succeeding generation may build with the quality and the sensitivity of past generations.
8. To be minimally intrusive on property owners and to work with them to encourage sound stewardship and to foster a sense of pride in heritage resources.
9. To provide a stabilizing influence for the community's cultural and social life.
10. To reaffirm that structures built as residences during or before 1930 are, in general, of historic architectural and cultural interest; and that the significance of these structures may be either as noteworthy landmarks, recognized for their individual merits, or as elements that contribute to the particular qualities of a scene, neighborhood, or locality which has significance.
11. To establish a historic and cultural conservation district, which overlays the entire city, because of the scattered location of these structures and sites of historical, architectural and cultural significance. It is the intent that the benefits to the community and property owners in such district will be realized as fully as possible, with a minimum of expense and delay, in accordance with the objectives of the section.
12. To utilize the advice of the historical commission, the historic architectural review board, the architectural advisory board, and other organization or individuals qualified by experience, training and interest to assist in carrying out the provisions of this section, consistent with the policy of the city.

(b) Definitions.

Alteration: Any change, modification, or addition to the structure, materials, texture or details of all or a part of the exterior of any building, structure, or site other than normal repair, maintenance, and landscaping.

Building: A construction created principally to shelter any form of human activity, including, but not limited to: house, barn, church, or place of business.

Building Official: That person appointed by the city manager as the individual who issues the permit for the construction, alteration, reconstruction, repair, restoration, or razing of all or part of any building.

Building Permit: An approval statement issued by the building official authorizing the construction, alteration, reconstruction, repair, restoration, or razing of all or part of any building.

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*Certificate of Appropriateness (COA):* The approval statement signed by the chair of the Historic Architectural Review Board or by the planning director which certifies the appropriateness of a particular request for the construction, alteration, reconstruction, repair, restoration, or razing of all or part of any protected building or built structure, subject to the issuance of all other building permits required.

*Exterior Features – Architectural Appearance:* The architectural style, general design and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material, and the type and style of all windows, doors, light fixtures, signs, and decorative features that are subject to the public view from a public street, public way, or other public places.

*Historic:* That which pertains to periods of development, events, persons, and activities of importance in the history of the City of Falls Church, the Commonwealth of Virginia, or the United States of America.

*Historic and Cultural Conservation District:* Any area so designated by action of the city council to encompass sites or areas having historic, architectural, archaeological, or cultural interest of such significance to warrant conservation and preservation. An historic overlay district may consist of a single building, structure, landscape or site, including an archaeological site, areas which contain multiple buildings, structures, landscapes or sites, or the entire boundaries of the jurisdiction.

*New Construction:* Any construction within the parcel containing a protected structure which is independent of an existing structure or an expansion of an existing structure.

*Normal Repair and Maintenance:* Any work involving the repair or replacement of existing materials and features with equivalent material, but not including any addition or modification in construction. Routine maintenance includes repainting the same or different color, but does not include the initial painting of masonry surfaces on any resource.

*Preservation:* The act or process of applying measures to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. In the case of buried archaeological sites, preservation may refer to the preservation of information through the systematic excavation of all or a portion of a site. In this context, the information about the site is preserved, rather than the site or building or structure itself.

*Property:* One or more recorded real estate parcel(s) containing an archaeological site and/or structures, which is designated and protected by an historic overlay district.

*Razing:* The dismantling or tearing down of all or a part of any building or structure and all operations, including grading, incidental thereto.

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*Reconstruction:* The act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time and in its historic location.

*Rehabilitation:* The act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features, which convey its historical, cultural, or architectural values.

*Repair:* The work, act, or process of restoring to sound condition after damage or of renewing or refreshing.

*Restoration:* The act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

*Reviewing Bodies:* All individuals, boards or elected/appointed bodies, given review authority under this section, including the planning director, the zoning administrator, the building official, the historic architectural review board, and the city council, upon appeal.

*Site:* The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing or nonexisting structure.

*Site Improvements:* Structural changes to the grounds of a property including the installation or alteration of walls, fences, or structures, paving, regrading, and the installation or removal of major plantings.

*Structure:* Any functional construction, made usually for purposes other than sheltering human activity, or any production or piece of work artificially built up or composed of parts joined together in some definite manner.

(c) *Creation of the Historic Architectural Review Board (HARB).* To preserve and to protect historic places and areas in the city through the control of razing of such places and through the regulation of architectural design, there is hereby created a board to be known as the Historic Architectural Review Board ("HARB") to be composed of five (5) voting members. The city council shall appoint members of the HARB.

In selecting members, the city council may consider, among other factors, potential members' demonstrated interest, competence of knowledge in historic preservation, archaeology or planning; at least one (1) member shall be an architect or an architectural historian.

Each member shall be appointed by the city council for staggered terms of four (4) years unless the appointment is to fill an unexpired term. Members may be reappointed for consecutive terms. Members may serve until successors are appointed, however the city

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council shall fill all vacancies within sixty (60) working days. Members shall serve without pay.

Any HARB member may be removed from office by the city council for inefficiency, neglect of duty, malfeasance, or the continued absence from the regular or called meetings of the board. Members shall be subject to the Virginia Conflict of Interest Act.

The HARB shall elect from its own membership a chair, a vice-chair, and a secretary who shall serve annual terms and may succeed themselves. The chair shall preside over all meetings of the HARB and shall have the same right to vote and to speak therein as other members. The vice-chair shall, in the absence or disability of the chair, perform the duties of the chair. The secretary shall keep a record of all proceedings and actions of the HARB. The planning director or his designee shall serve as administrative staff to the HARB and maintain all records, minutes, and files relating to the HARB meetings.

HARB members shall make every effort to attend at least one (1) training session annually sponsored by the Virginia Department of Historic Resources, the Preservation Alliance of Virginia or other organizations that are involved with historic preservation issues, design and review standards or other work of the HARB.

(d) Powers and Duties of the HARB.

1. The HARB shall administer the provisions of section 38-39, in accordance with the duties as set forth, and shall establish and periodically review appropriate design guidelines for historic districts subject to approval by the city council.
2. The HARB may, from time to time, recommend areas for designation as specific historic overlay districts, and additions or deletions to districts.
3. The HARB shall be advisory to the planning commission, the board of zoning appeals, and the city council in rezonings, special use permits, site development plans, subdivisions, variances, and other matters within historic overlay districts and that are requested for or adjacent to protected properties.
4. The HARB shall review and approve, with or without modifications, or deny all applications for Certificates of Appropriateness in a specific overlay district or on protected properties.
5. The HARB shall review all proposed National Register nominations within the City of Falls Church for the purpose of providing local comment to the State Review Board and to the Board of Historic Resources.
6. In addition to the powers and duties set forth in section 38-39(d)(1) through (5), the HARB shall have the following powers and duties, which may be delegated to another entity as the HARB may decide:

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- a. Act in an advisory role to other officials and departments of local government regarding protection of local historic resources;
- b. Periodically conduct, or cause to be conducted, a survey of historic resources in the community according to guidelines established by the State Historic Preservation Office;
- c. Disseminate information within the city on historic preservation issues and concerns;
- d. Coordinate local preservation efforts with those of local historic and preservation organizations, the Virginia Department of Historic Resources, and other parties, both public and private;
- e. Receive and act on public comment;
- f. Advise owners of historic properties on issues of preservation, as requested;
- g. Make recommendations to the city council regarding authorization of plaques to commemorate historic resources;
- h. Seek funds to forward the purposes of this ordinance, and to make recommendations to the city council concerning the use of the funds;
- i. Investigate and support incentives programs including heritage tourism events and activities; and
- j. Investigate and support heritage education activities.

(e) HARB's Authority to Adopt Rules of Procedure. The board shall be authorized to adopt rules of procedure for the transaction of its business and implementation of the purposes of this section. The rules of procedure shall not conflict with the provisions of this section.

(f) Additional Authorities of the HARB.

1. Authority to request information from other governmental agencies. Upon the request of the HARB, with the city manager's approval, the departments, divisions, boards, commissions, offices and agencies of the city government shall furnish to the HARB such available information and render such service as may be required for the exercise of the powers and performance of the board's duties.
2. Authority to employ staff and consultants. Within the limits of funds appropriated by the city council, the HARB may employ or contract for such legal counsel, consultants and other technical and clerical services as the HARB may deem necessary for the transaction of its business. The HARB shall have the authority to request the opinion, advice or other aid of any officer, employee, board, or commission of the city within the scope of his or its respective competence.
3. Authority to receive funding from various sources.
  - a. All persons interested in the preservation of historic buildings or historic sites in the city are invited to make gifts, devises and bequests to the city to be used for that purpose. All such donations, other than money, shall be

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subject to acceptance by the city council. All donations of money shall be made through the Treasurer's Office, and it is hereby authorized and directed to receive such donations and to deposit them in a special fund to be known as the "Historic Buildings and Sites Trust Fund", and shall be used only for the purpose of preserving and promoting the preservation of historic buildings and sites in the city. Expenditures from such fund shall be made by the city manager as authorized by the city council.

- b. The HARB may seek federal, state or private grants or funding to assist in the performance of its duties as defined herein.

(g) Records of HARB Meetings. The planning director or his designee and the HARB shall maintain a file containing a record of all applications brought before them, including drawings and photographs pertaining thereto and the decision of the planning director or the HARB in each case in order to provide guidance for application of standards and guidelines, for the improvement of standards and guidelines, and for assistance to future applicants and the promotion of consistent policies in guiding applicants toward better standards of design. The file documents shall remain the property of the city, but shall be held available for public review.

(h) Creation of Historic Districts and Landmarks.

(1) Historic and Cultural Conservation ("HCC") District Created. An Historic and Cultural Conservation ("HCC") District is hereby established pursuant to Section 15.1-503.2 of the Code of Virginia, as amended, to promote the general welfare through preservation and protection of sites, buildings and structures having historical, archaeological, architectural or cultural significance. This HCC District is created as a zoning overlay district, which shall cover all land within the boundaries of the city. The boundaries of the HCC are those as stated in the City Charter at Section 1.02 [Check reference]. Any parcel of land lying in the HCC District shall also be in one (1) or more of the other zoning districts provided for in this chapter.

(2) Inventory of Landmark Properties Established. The HARB shall prepare and recommend for adoption as part of this ordinance an inventory map based upon the criteria set forth in this ordinance. This map, hereinafter called the inventory map, when adopted shall be as much a part of this ordinance as if fully described herein and shall be filed as a part of this ordinance by the clerk of the City of Falls Church. All structures or sites designated on said map shall be considered as landmark properties for the purposes of this Ordinance. The inventory map may be amended from time to time in the same manner as the zoning district map.

(3) Power to Recommend Districts to the City Council for Designation. The historic architectural review board, the planning commission, the city council, any petitioner with a petition signed by five (5) registered voters, or the owner of any landmark building, structure, or property in the city, including those listed on the Virginia Landmarks Register or the National Register of Historic Places, may



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make a written request of the HARB for the consideration of recommending the designation of such landmark building, structure, or property as an historic district. The HARB shall recommend the requested historic district if, after a public hearing, it considers said district to be of historic, architectural, archaeological, or cultural merit as based on the criteria established in section 38-39(h)(1).

- (4) *Preparation of Report on Proposed Designation.* The planning division shall prepare and submit a report to the HARB, the planning commission, and the city council evaluating the proposal to establish or to amend an historic overlay district. Such report shall identify the historic overlay district boundaries as well as the historic, architectural, archaeological, or cultural significance of buildings, structures, or sites to be protected, and describe present trends, conditions, and desirable public objectives for preservation. In addition, such report shall include the following specific information:
- a. An analysis of current conditions including ownership, existing and planned land use, existing zoning, access and existing structures by period of construction, architectural style, condition and matters relating to site conditions, such as building location, location of yards and other open spaces, access to interior of lots, and off-street parking provided.
  - b. A description of individual structures and premises of substantial public interest, with maps, photographs, and other data indicating the public importance of their preservation and the particular features to be preserved. These shall be identified as historic or contributing properties and noted as such in the report.
  - c. A description of existing structures, premises, and uses likely to have an adverse effect on the desired character of the district, including those near and visually related to the district, with maps, photographs, and other data indicating the reasons for such an effect.
  - d. An analysis of the extent and historic significance of identified archaeological sites including general location maps, photographs, and other data indicating the public importance of a particular site.
  - e. The boundaries of the proposed historic overlay district and the location of the district core and all historic and contributing properties shall be shown on the current zoning map and a listing of the related tax map reference numbers shall be provided.
  - f. Recommendations concerning detailed regulations to be applied within the district, to supplement or modify general regulations set forth in this section, which detailed regulations may include those pertaining to permitted and prohibited principal and accessory uses and structures, use limitations, bulk regulations, lot size requirements, performance standards, off-street parking and loading requirements, control of signs and exterior limitation, landscaping and screening, control of exterior character of buildings and sites when visible from a public way only, and control of, additions to, or removal of existing buildings where said controls and

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regulations are only for the express purpose of preventing changes which are architecturally incompatible with the buildings, structures or sites to be preserved.

The report for a request to revise an existing historic overlay district may contain all or part of the information set forth above as deemed appropriate by the planning director in conjunction with the HARB.

- (5) The consent of an owner of record for a property or properties within the proposed historic overlay district is not required for the city council to designate such a district.

(i) *Designation of Historic Districts or Landmarks.*

- (1) *Criteria for Selection of Historic Districts or Landmarks.* Criteria for evaluating the merits of a given building, structure or space shall be based on archaeological and/or architectural features, as well as historic factors. Certain buildings or areas may be valuable examples of the city's physical and cultural heritage. Structures built (as residences?) in or before 1930 foster civic pride in the city's past and enhance the city's attractiveness to visitors.

- (2) Additionally, the nomination criteria for the National Register of Historic Place will apply to buildings, structures, and sites not included above. These criteria specify that the quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association; and:

- a. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- b. That are associated with the lives of persons significant in our past; or
- c. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. That have yielded, or may be likely to yield, information important in prehistory or history.

(j) *Boundaries of Historic Districts or Landmarks.*

- (1) The boundaries of an historic district or overlay area shall, in general, be drawn to include areas containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features

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relating to the archaeological, cultural or artistic heritage of the community of such significance as to warrant conservation and preservation. The district may include either individual buildings or places of such character and a reasonable distance beyond, or it may include areas or groupings of structures which have significance relative to their patterns of development or social and economic or architectural interrelationships even though some structures in the area might not possess significant merit when considered alone. In any case, the location of the district shall be based upon careful studies that describe the characteristics of the area and support the purposes of conservation and preservation.

The boundaries of an historic district shall conform to the boundaries of individual lots of record. Where a street is proposed as an historic district boundary, the edge of the right-of-way adjoining the district shall be deemed the district boundary.

- (2) Development of property lying in this district shall comply with both the requirements of the underlying district and of the overlay district. Where the requirements are in conflict, the requirements of this district shall take precedence.

(k) *Permitted Uses and Limitations.* A building or land shall be used only for the following purposes, and except as provided herein, in each case shall be subject to approval by the historic architectural review board or the planning director, as the case may require, in accordance with the standards set forth in this article:

- (1) All uses shall be governed pursuant to the underlying district regulations of the zoning district in which the historic overlay district is applicable.
- (2) Nothing in this article shall be construed to prevent the application of the building code or other laws and ordinances of the City of Falls Church, which are applicable thereto.
- (3) Parking and loading provisions shall be in accordance with the provision of the zoning ordinance unless otherwise restricted by the conditions of HARB approval.
- (4) The normal maintenance of an historic area, building or structure or the charging of admission fees for visitors or the visitor tours, centers, or services within the historic overlay district shall not be considered as commercial uses.
- (5) Any special use permitted in the zoning district in which the premises are located is subject to the procedures and standards of this section for approval of said special use permits and shall be subject in all cases to a recommendation by the HARB to the board of zoning appeals in accordance with the purposes and standards of the historic overlay district.

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(6) Any special exception or variance permitted in the zoning district in which the premises are located are subject to the procedures and standards of this ordinance for approval of special exceptions and variances and subject to recommendation by the HARB and specific findings of the city council or the board of zoning appeals, as appropriate, in accordance with the purposes and standards of the historic overlay district.

(7) Off-Street Parking Requirements.

a. Residential structures which have been converted from a single-family residence to a use which conforms to, or is permitted within, the underlying zoning district in which they are located are not required to provide off-street parking and/or loading spaces. If off-street parking and/or loading spaces are provided, requirements for size, materials, number of spaces, and driveway requirements will be at the discretion of the HARB so long as such requirements relate to the maintenance of the historic character of the zoning district.

b. No required off-street parking or loading space shall be located in any required front yard.

c. Where a single-family detached dwelling is being constructed or rehabilitated on a lot too narrow to permit practicable access to a parking area outside the front yard, the certificate of appropriateness may waive the off-street parking requirement.

(l) *Yard Variances for Historic Structures.* With respect to lots of record which were established prior to the adoption of the zoning ordinance within the historic overlay district, where the use conforms to the underlying zoning district in which they are located, the owner may obtain special yard variances (exceptions) for primary and accessory buildings from the board of zoning appeals, after a public hearing as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended, under the following circumstances and subject to the following conditions:

(1) An exception from the yard setback regulations for a lot where an adjacent lot has a front, side and/or rear yard setback that does not conform to the zoning code, provided that no side yard setback shall be reduced to less than ten (10) percent of the lot width, or in any case to less than five (5) feet.

(2) An exception from the yard setback regulations for a corner lot, or lots opposite or adjoining permanent open spaces, including parks and playgrounds.

(3) An exception from the rear yard setback requirements for a lot in a block where there are other nonconforming rear yard conditions.

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(4) An exception from the front yard setback requirements for a lot fronting on a street where there are irregular front yards for other buildings fronting on the same street in the same block, which would allow the owner to construct or to modify a building so as to have a front yard setback similar to that of one of the existing buildings.

(5) In approving a variance, the board of zoning appeals shall make the following findings:

- a. That the exception which is granted is necessary to maintain the historic character of the zoning district in which the lot is located and is consistent with the provisions of section 38-39(a) and section 38-39(h) of this section.
- b. That the exception improves the relationship of the proposed site plan or development with the location of structures on surrounding properties as compared to a site plan or development that complied with all yard setback requirements.
- c. That such exception will not substantially adversely affect the uses of adjacent and neighboring property.

(m) Authority to Amend or to Rescind Designation. The city council may, by ordinance, designate additional properties to be included in an historic overlay district, remove properties from an historic overlay district or designate properties as historic landmarks. Prior to the adoption of such an ordinance, the city council shall consider the recommendation of the planning commission and the recommendation of the historic architectural review board regarding the addition, removal or designation proposed.

ARTICLE II

(n) Application for Certificate of Appropriateness.

(1) HARB power to approve alterations and new construction. No building or structure, or any exterior portion thereof, or signs, and paving shall be constructed, altered, reconstructed, repaired, restored or razed in whole or in part on protected properties within the historic overlay district unless the same is approved by the historic architectural review board or, on appeal, the city council, as being architecturally compatible with the Design Guidelines.

(2) HARB action on publicly owned historic properties. All city departments responsible for historic public buildings, monuments, districts, and places shall submit an application to raze, move, or alter said structures or places or to construct new structures on a parcel containing an historic structure to the historic architectural review board for review and recommendation. For buildings and structures owned by or proposed to be constructed by other governmental entities or public utility companies, the city manager shall request that such owners

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submit an application for a certificate of appropriateness and adhere to all requirements of this Ordinance.

- (3) *Limitations.* The historic architectural review board shall not consider interior arrangements or features or structural details which are not subject to public view from any public street or right-of-way. Nothing in this article or section shall be construed to prevent:

- a. The ordinary maintenance or repair of any exterior elements of any building or structure; or
- b. The construction, reconstruction, alteration or razing of any such element which the authorized city officials shall certify as required for public safety. Retroactive approval for emergency work undertaken where public safety is endangered or an emergency situation arises shall be sought within thirty (30) days following completion of the work. All work shall strive to maintain architectural compatibility within the historic overlay district for its public works and structures.

(o) *Submission of Plans.*

- (1) *Optional pre-application conference or review.* Prior to the submission of an application for a certificate of appropriateness, an owner may hold a conference with the HARB chair or with the planning director or any person may request the HARB to review conceptual design proposals for exterior work. Such conceptual conference or review shall be advisory only.

- (2) *Information required.* To consider an application complete, the planning director or the HARB may require any or all of the following information and any other materials as may be deemed necessary for its review:

- a. Statement of proposed use and user.
- b. Statement of estimated construction time.
- c. Photographs and maps relating the proposed use to the surrounding property and/or the street on which it is located.
- d. Site plan drawings, showing the location of the existing and proposed building and site improvements, including:
  1. Existing property boundaries, building placement, and site configuration.
  2. Existing topography and proposed grading.
  3. Location of parking, pedestrian access, signage, exterior lighting, fencing, and other site improvements.
  4. Relationship to adjacent land uses.
  5. Proposed site improvements, including location of parking, pedestrian access, fencing, buildings and structures, and other appurtenant elements.

**DRAFT**6. Proposed building materials.

- e. Architectural drawings showing plan view and elevations of new planned construction or renovations, including drawings of original building.
- f. Written statement concerning construction methods to be employed.
- g. Building materials samples to show the nature, texture, and design, including product specifications.
- h. For an application to raze where structural integrity is at issue, the applicant shall also provide a structural evaluation by a qualified structural engineer and cost estimates for rehabilitation. The HARB may waive the requirement for a structural evaluation and cost estimates in the case of an emergency or if it determines that the structure proposed for razing is not historically significant under the criteria set forth in section 38-39(i).

(3) Other approvals required. In any case in which an applicant's proposal also requires the approval of other authorities, the following sequence of review shall apply:

- a. Board of Zoning Appeals. Final action of the HARB shall precede action by the board of zoning appeals. If the board of zoning appeals denies an associated variance, the applicant must return to the HARB for consideration of a modified plan.
- b. Planning Commission: Final action of the HARB shall precede planning commission consideration of proposals requiring site plan, subdivision, or rezoning approval.

(p) Administrative Review.

- (1) Certain minor actions exempted from review. Certain minor actions, which are deemed not to permanently affect the character of the historic property or district are exempted from review for architectural compatibility. Such actions shall include the following and any similar actions which, in the opinion of the planning director, will have no more effect on the character of the building, structure, or district than those listed: repainting (original painting of masonry surfaces is not exempted from review); addition or deletion of windows, storm windows, or storm doors that match existing windows, storm windows, and storm doors; addition or deletion of window air conditioners; addition or deletion of television or radio antennas, skylights, solar collectors, or satellite dishes in locations not visible from a public street; planting of grass, trees, and shrubs except landscape treatment which substantially alters the contour of a landmark property or which substantially demolishes existing trees and plantings; permitted outside storage in any zoning district which is not visible from a public street; or any changes within a structure.

Notwithstanding the above, the planning director and the zoning administrator shall have the authority to order that work be stopped and that an appropriate

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687 application be filed for review in any case where the action may produce arresting  
688 effects, violent contrasts of materials, intense or lurid colors or patterns, or  
689 incongruous details inconsistent with the character of the present structure or with  
690 the prevailing character of the surroundings and the historic building or structure.

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692 (2) Approval of certain minor action by the planning director.

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694 a. Certain actions which are deemed to result in only minor effects on the  
695 character of the historic building, structure, or property may be approved  
696 by the planning director for any structure, including designated landmarks,  
697 upon submittal of an appropriate application as described in section 38-  
698 39(o)(2).  
699
- 700 b. Such action shall include the following and any similar actions, which in  
701 the opinion of the planning director, will have no more effect on the  
702 character of the historic building or structure than those listed:
- 703 1. Addition or deletion of outside doors, window frames, shutters,  
704 permanent canopies, and similar appurtenances.
  - 705 2. Application or use of exterior materials of a similar kind, type,  
706 color or texture of those already in use which will substantially  
707 cover one or more sides of the structure, but which will not result  
708 in destruction or replacement of original exterior material. This  
709 provision applies to roofing as well as siding.
  - 710 3. Minor alterations or deletions to the structure, which will not  
711 substantially change the architectural character of the structure or  
712 which are generally hidden from public view.
  - 713 4. Landscaping involving minor grading, walks, low retaining walls,  
714 temporary fencing, small fountains, ponds, and the like, which will  
715 not substantially affect the character of the property and its  
716 surroundings.
  - 717 5. Off-street loading areas and off-street parking areas containing ten  
718 spaces or less in a business or an industrial district.
  - 719 6. Outside storage, which does not require structural changes or  
720 major grading in a business or an industrial district, and which is  
721 not visible from a public street.
  - 722 7. Emergency repairs to secure a building or structure from damage  
723 caused by severe weather.  
724
- 725 c. The planning director shall be guided in his decisions by the standards and  
726 guidelines established for the HARB and shall have authority to request  
727 modifications of a specific proposal in order that the proposal may comply  
728 with said standards and guidelines.  
729
- 730 d. In any case where the planning director is uncertain of his authority to act  
731 on a particular application under this section or in any case where the



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planning director and the applicant cannot agree on changes in the proposal, the application shall be referred to the HARB for action.

e. The planning director shall issue and sign a certificate of appropriateness, subject to the provisions of section 38-39(u)(9)b. upon approval of an application for minor action. The applicant shall be issued the original of the certificate and a copy shall be maintained on file in the planning division.

f. In any case where the planning director has denied an application, the applicant may appeal that decision to the HARB within thirty (30) days.

g. The planning director or his designee shall keep a record of his decisions under this section and shall report such decisions to the HARB at its next regular meeting.

(q) HARB Action on Application for Certificate of Appropriateness.

(1) Approval of major action by the HARB. The following major actions and any other actions not specifically exempted by this section or which, in the opinion of the planning director, may constitute a major permanent and/or detrimental change to the character of the historic overlay district shall be approved only after a public meeting and favorable action by a majority of the HARB.

a. Razing or moving of a designated landmark or accessory building or structure.

b. Construction of a new accessory building or structure on a designated property.

c. Construction of a new primary building or a new accessory building on a site adjacent to a designated property.

d. Any addition to, or substantial alteration of, a designated building, structure, which increases the square footage of the building or structure or otherwise alters substantially its size, height, contour or outline.

e. Any change or alteration of the exterior architectural style of a designated building or structure, including removal or rebuilding of porches, dormers, cupolas, stairways, terraces, and the like.

f. Addition to or removal of one or more stories pertaining to a designated building or structure.

g. Alteration of the roofline of a designated landmark.

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h. Any other major actions not specifically covered by terms of this section, but which would have a substantial effect on the character of the designated landmark.

(2) The HARB shall be guided in its decisions by the standards and guidelines established in this section and in the Design Guidelines for Historic Structures. The HARB shall have authority to request modification of proposed action in order to comply with said standards and guidelines.

(3) The HARB shall not disapprove an application except with respect to the standards and guidelines in this section. The HARB shall give reasons for its decisions, shall act promptly on applications before it, and shall coordinate its procedures with those of other agencies and individuals charged with the administration of this Ordinance. The HARB shall not be strict in its judgment of plans for buildings or structures of little historic or architectural value or for plans involving new construction, unless such plans would seriously impair the historic, archaeological or architectural value of surrounding buildings or structures or of the surrounding area.

(4) The HARB is not required to limit new construction, alterations or repairs to the architectural style of any one period and may seek advisory assistance from experts in such field(s) as the board's work requires.

(5) Where the exterior appearance of any building or structure is involved, no building permit shall be issued for erection, alternation, or improvement, and the building official shall issue no certificate of occupancy unless a certificate of appropriateness has first been issued.

(6) No exterior alterations, which do not require a building permit, but which can change the exterior appearance of the building or structure such as replacement of doors, window sash, porch railings, roof areas under 100 square feet, and porch flooring; installation, removal or replacement of trim detail, shutters, gutters and down spouts; sign face changes; and the like shall be constructed or installed unless a certificate of appropriateness has first been issued.

(7) No property features or appurtenances (such as walls, fences, arbors, paved parking areas, patios, decks, garages, tool sheds, other accessory structures, and the like when part of the feature is visible from the public right-of-way or a public space) shall be constructed or installed unless a certificate of appropriateness has first been issued.

(8) The board of zoning appeals shall take no action in cases where certificates of appropriateness are involved until such certificates are issued.

(9) During construction or installation, the certificate of appropriateness shall be posted on the property in a location that is visible from the public right-of-way,

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and a complete set of the approved plans shall be retained on the premises and shall be made available to the city inspectors.

(r) Standards for the HARB to Use. The HARB shall consider, among other things, the following in determining the appropriateness of any new construction, reconstruction, exterior alteration or restoration:

- (1) The compatibility with the design, development standards, and criteria as included in the City of Falls Church Design Guidelines, December 2001, with additions and amendments as may be adopted from time to time.
- (2) The appropriateness of the overall architectural design, form and style, including the height, mass, and scale of buildings and structures, proportions, structural arrangement, building materials, and texture of the proposed building, structure or appurtenant elements in relation to such factors as the compatibility with similar features of buildings or structures within the area circumscribed by the subject overlay district(s).
- (3) The historical, archaeological or architectural value and significance of the building, structure or appurtenant element and its relationship to the historic, archaeological or architectural value of the area in which it is proposed to be located.
- (4) The extent to which the building, structure or appurtenant element will be harmonious with or architecturally incompatible with the historic buildings within the subject overlay district(s).
- (5) The compatibility of planned improvements and renovations with the architectural and historic quality, character, and scale of the historic buildings in the City of Falls Church.
- (6) The effect of the building, structure or appurtenant element on the Comprehensive Plan's goals for tourism, economic development, and residential land uses in and around the historic structures in the City of Falls Church.
- (7) The compatibility of the proposed building, structure or appurtenant element with the Comprehensive Plan's goals for historic preservation and architectural design review.
- (8) The ability of the owner to put one's property to reasonable and beneficial use.
- (9) The view of the structure or area from a public street or road, present or future.
- (10) The probable effect of proposed construction on historic properties.

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(11) Any other factors, including aesthetic factors, which the HARB deem to be pertinent.

(12) The HARB shall also be guided by the purposes for which buildings, structures, properties, and historic district(s) are designated and by the particular standards and considerations contained in the Secretary of the Interior's Standards for Rehabilitation.

(s) *Economic Hardship Arguments.* The HARB may, in its discretion, issue a temporary certificate of appropriateness to an applicant who does not meet the necessary requirements of architectural compatibility, but only if the applicant meets all of the following requirements:

(1) Strict application of this article would produce inordinate hardship;

(2) The proposed work would not be of such a permanent nature as to preclude future activity which would meet compatibility compliance; and

(3) No such temporary certificate shall be issued to allow the proposed work to exist for a period to exceed five (5) years.

To establish inordinate hardship under this section, the applicant must submit evidence that rehabilitation of the structure is impractical, that the structure is inappropriate for the proposed use desired by the owner, and that the applicant cannot make reasonable economic use of the property. Such evidence may include proof of consideration of plans for adaptive reuse, attempts to sell, rent or lease the property, and information regarding annual income and expenses. Any hardship created by action of the applicant shall not be considered in reviewing any application.

(t) *Notice of HARB Public Hearings on Applications for Certificates of Appropriateness.* Prior to issuance or denial of a certificate of appropriateness, the HARB, or on appeal to the city council as provided by section 38-39(x)(2), the HARB shall give the applicant and other persons an opportunity to be heard after the following notice has been given:

(1) A notice of the public hearing shall be published not less than ten (10) days prior to the hearing date in a newspaper having general circulation in the city; and

(2) Notice shall be sent by first class mail to owner(s) of property, which will be the subject of the hearing and owner(s) of all property or portions of property located within one hundred fifty (150) feet from the affected property, including any property, which lies in an adjoining jurisdiction, at least ten (10) days prior to the public hearing.

(u) *Form of Decision and Required Findings.*

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- 914 (1) The HARB shall render a decision on each application in open hearing not later  
915 than the next regular meeting after the conclusion of the hearing on the  
916 application, unless time is extended by mutual agreement between the HARB and  
917 the applicant.
- 918
- 919 (2) The HARB shall state its findings in writing of all final decisions rendered.  
920
- 921 (3) Approval by the HARB of any application for new construction, alteration, or  
922 restoration shall be evidenced by issuance of a certificate of appropriateness  
923 signed by the chair. The certificate of appropriateness shall be issued within  
924 fifteen (15) days of approval, but shall be subject to the provisions of section 38-  
925 39(u)(9)b.. The applicant shall be issued the original of the certificate and a copy  
926 shall be maintained on file in the planning division.  
927
- 928 (4) The HARB may permit modifications of the original proposal if such  
929 modifications are formally acknowledged, clearly described, and recorded in the  
930 records of the case.  
931
- 932 (5) In the case of a proposal involving a designated property, except for moving or  
933 razing, where the HARB or, on appeal the city council, cannot reach a satisfactory  
934 agreement with the owner, and where the HARB or, on appeal, the city council,  
935 decides such action to be in the public interest and not in conflict with any  
936 provision of law, it may delay the effective date for approval for a period of three  
937 (3) months from the date of application or appeal to enable negotiations to be  
938 undertaken and completed for acquisition of the property for preservation or  
939 public use. Failure of negotiations within this period shall be the equivalent of a  
940 denial of the application by the HARB or, on appeal, by the city council.  
941
- 942 (6) Upon denial of an application, the HARB may make recommendations pertaining  
943 to design, texture, material, line, mass, dimensions or lighting. Such application  
944 may again be heard by the HARB, if within ninety (90) days of the decision to  
945 disapprove by the HARB, the applicant has amended his application in substantial  
946 accordance with the HARB's recommendations.  
947
- 948 (7) The HARB shall not reconsider any decision nor shall it hear substantially the  
949 same application, which has been denied, for a period of one (1) year after any  
950 such decision, except as provided in (6) above.  
951
- 952 (8) If an application is denied or approved with conditions over the applicant's  
953 objections, the applicant shall be notified in writing of the specific reasons for the  
954 denial or for the conditions.  
955
- 956 (9) A certificate of appropriateness shall be in addition to any other permits required.  
957 Any action of an applicant following issuance of a permit requiring a certificate of  
958 appropriateness shall be in accordance with the application and material approved  
959 by the HARB.

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- a. After issuance of a certificate of appropriateness, the planning director and/or the zoning administrator shall from time to time inspect the alteration or construction approved by such certificate and shall give prompt notice to the applicant of any work not in accordance with such certificate or in violation of any other city ordinance. The planning director may revoke the certificate or the building permit if the applicant does not correct the violations in a timely manner.
- b. Any proposed action, which has been approved by the HARB or by the planning director and received a certificate of appropriateness must commence within twelve (12) months of the approval date. If the approved action has not commenced within twelve (12) months, then a request for an extension must be applied for and granted by the HARB or the planning director, as appropriate, before such action can commence. A single extension for a period of six (6) months may be granted if, based on submissions from the applicant, the HARB or the Planning Director find that conditions on the site of the proposed project are essentially the same as when approved originally.

(10) The HARB shall render a decision upon any application for a certificate of appropriateness within sixty (60) days after the filing of a complete application. Failure of the HARB to render such a decision within said sixty (60) day period, unless such period be extended with the concurrence of the applicant, shall entitle the applicant to proceed as if the HARB had granted the certificate of appropriateness for which the applicant applied.

(v) *Maintenance of Historic Properties.* All historic buildings, structures, and properties within the historic overlay district shall be preserved against decay and deterioration, and maintained free from structural defects to the extent that such decay, deterioration or defects may, in the opinion of the HARB, result in the irreparable deterioration of any exterior appurtenance or architectural feature, or produce a detrimental effect upon the life and character of the building or structure itself, including but not limited to:

(1) The deterioration of exterior walls or other vertical supports;

(2) The deterioration of roofs or other horizontal members;

(3) The deterioration of exterior chimneys;

(4) The deterioration or crumbling of exterior plaster or mortar;

(5) The ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors;

(6) The peeling of paint, rotting, holes, and other forms of decay;

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(7) The lack of maintenance of surrounding environment, e.g., fences, gates, sidewalks, steps, signs, accessory structures, and landscaping; and

(8) The deterioration of any feature so as to create or to permit the creation of any hazardous or unsafe condition or conditions.

After notice by the HARB by certified mail of specific instances of failure to maintain or repair, and of the opportunity to appear before the HARB, the owner or person in charge of said structure shall have ninety (90) days to remedy such violation. Thereafter, each day during which there exists any violation of this section shall constitute a separate offense and shall be punishable as provided in the Zoning Ordinance.

If the owner fails to act, the HARB may order the zoning administrator, after due notice to the owner, to enter the property and make or cause to be made such repairs as are necessary to preserve the integrity and safety of the structure. The reasonable costs thereof shall be placed as a lien against the property.

(w) Applications to Raze or to Move.

(1) Application for a permit to raze a building or structure. The board shall review the circumstances of the proposed razing and the condition of the structure proposed for razing and shall report its findings based on consideration of each the following criteria:

- a. Is the building or structure of such architectural or historical interest that razing it would be detrimental to the public interest? In this connection the HARB must consider the purpose of preservation and may consider the criteria for designating structures listed in section 38-39(i) and the "National Register Criteria for Evaluation".
- b. Is the design, texture and material of the building or structure so old or unusual that it could not be reproduced or reconstructed in a financially reasonable manner?
- c. Is the building or structure structurally sound or can it be made sound at reasonable cost?
- d. If maintained or rehabilitated and used under existing zoning, can the building or structure be expected to yield a reasonable return or beneficial use at reasonable cost to its owner?
- e. Could the building or structure be saved from razing by moving it to another site, thus making its present site available for redevelopment in accordance with existing zoning?

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- f. Would retaining the structure protect the general welfare by maintaining and increasing real estate values, generating business and employment, attracting new residents, as well as tourists, students, writers, historians, artists or artisans, encouraging the study and interest in American or Virginia history, stimulating interest and study in architecture and design, education citizens in American or Virginia culture and heritage, or making the city a more attractive and desirable place in which to live?

(2) Application for a permit to move a building or structure. Moving shall mean changing the location of the structure. It does not include, for example, the temporary lifting of a structure for purposes of adding a basement.

The board shall consider the following criteria:

- a. Would the proposed relocation have a detrimental effect on the structural soundness of the building or structure?
- b. Would the proposed relocation have a detrimental effect on the historical aspects of other historic structures in the historic overlay district?
- c. Would relocation:
1. prevent demolition of the building?
  2. be within the city's historic overlay district?
  3. provide new surroundings that would be harmonious with or incongruous to the historical and architectural aspects of the structure or building?
  4. help preserve and protect a historic place or area of historic interest in the city?
- d. The economic hardship, if any, to the applicant.

If moving a structure requires a variance, no variance shall be reviewed by the board of zoning appeals until a recommendation has been made by the HARB.

### ARTICLE III

(x) Appeal Provisions.

(1) From Planning Director to HARB. In any case where the planning director has denied an application, the applicant may appeal that decision to the HARB within thirty (30) days.

(2) From HARB to City Council.



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- a. The property owner, the planning director, or any owner of record within 150 feet of the subject property may appeal a final decision of the HARB to the city council by filing a written notice of appeal, together with all costs and fees necessary to cover the advertising for the council hearing, within ten (10) days of the date of the HARB decision.
- b. Upon appeal, the final decision of the HARB shall be stayed pending the decision of the city council; provided, however that the applicant is prohibited from taking any action for which approval is sought during the pendency of such appeal.
- c. Upon the filing of the notice of appeal and fee as provided herein, the city clerk shall schedule a review by the city council not more than thirty (30) days after the filing of such notice. Further, the city clerk shall cause to be published at least once in a newspaper of general circulation within the city, at least six (6) days before such proposed review, an advertisement stating the time, date, and place of the hearing before the council, the location of the property involved, the name(s) of the applicant and appellant, and the nature of the requested action.
- d. The city council shall review the application, record, documents, other materials produced by the HARB, and the notice of appeal, and the city council may modify or reverse the decision appealed, in whole or in part, when it is satisfied that the decision of the HARB is contrary to law or that its decision is not supported by a preponderance of evidence, or it may affirm the decision of the HARB.
- e. The city council may remand the matter to the HARB any time substantial new evidence is presented to the council.
- f. The city council's decision shall be forwarded to the building inspector.

(3) From City Council to Circuit Court.

- a. Any person may appeal any decision of the City Council to affirm, modify or reverse a decision of the HARB to the circuit court for review by filing a petition at law. The petition shall set forth the alleged illegality of the action of the city council and the grounds thereof.
- b. The petition shall be filed within thirty (30) days after the decision of the city council. The filing of the petition shall stay the decision of the city council, except that a decision denying a request for demolition shall not be stayed; provided, however that the applicant is prohibited from taking any action for which approval may have been granted during the pendency of such appeal. A copy of the petition shall be delivered to the city clerk,

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who shall file with the circuit court a certified or sworn copy of the records and documents considered by the city council.

c. The circuit court shall review the record, documents, and other materials filed by the city clerk. The circuit court may reverse or modify the decision of the city council, in whole or in part, if it finds upon review that the decision of the city council is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or the court may affirm the decision of the city council.

(y) *Additional rights of property owners.* In addition to the right of appeal herein above set forth, the owner of a historic building or structure, the razing of which is subject to the provisions of subsection (w) hereof, shall, as a matter of right, be entitled to raze such landmark, building or structure provided:

(1) The owner has appealed to the city council for such right.

(2) The owner has, for the period of time set forth in the time schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell such building or structure and the land pertaining thereto, to any person, firm, corporation, government or agency therefore, which gives reasonable assurance that it is willing to preserve and restore the building or structure and the land pertaining thereto; and

(3) That no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such building or structure and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained.

Any appeal which may be taken to the court from the decision of the city council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell pursuant to the provisions of this subsection referred to above.

The time schedule for offers to sell pursuant to the provisions of this subsection shall be as follows: Five (5) months when the offering price is less than fifty-five thousand dollars (\$55,000.00); six (6) months when the offering price is fifty-five thousand dollars (\$55,000.00) or more but less than seventy-five thousand dollars (\$75,000.00); seven (7) months when the offering price is seventy-five thousand dollars (\$75,000.00) or more but less than ninety thousand dollars (\$90,000.00); and twelve (12) months when the offering price is ninety thousand dollars (\$90,000.00) or more.

(z) *Enforcement.*

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(1) Failure to comply with the terms and conditions of an approved certificate of appropriateness may result in revocation of any subsequently issued permit requiring a certificate of appropriateness or may result in issuance of a zoning violation notice.

(2) The planning director or the zoning administrator shall have authority to order that work be stopped and that an appropriate application be filed or reviewed in any case where, in his opinion, the action may produce arresting and spectacular effects, violent contrasts or materials and intense and lurid colors or patterns or a multiplicity of incongruous details clearly inconsistent with the character of the present building or structure or when it appears that the work does not conform to the list of administrative review or exempted actions stated herein and, in fact, is more extensive than originally represented.

(aa) Penalty Provision.

(1) Criminal Penalty.

a. Any person who violates any provision of this section 38-39 shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000.00) and not less than one hundred dollars (\$100.00).

b. For the purpose of this section 38-39, each day during which there exists any violation of any provision herein shall constitute a separate violation of such provision.

(2) Civil Penalty. In addition to any other penalties allowed by law, there is hereby established, pursuant to Section 15.2-744 of the Code of Virginia, a civil penalty for the wrongful razing, or moving of part or all of a building or structure when such building or structure has been designated as historic or is part of an historic overlay district. The civil penalty shall be imposed on the party deemed by the circuit court to be responsible for the violation and shall not exceed the fair market value of the property, as determined by the city's real estate assessment at the time of the demolition, razing, or moving.

An action seeking the imposition of such a penalty shall be instituted by petition filed by the city in circuit court, which shall be tried in the same manner as any action at law. It shall be the burden of the City of Falls Church to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose. The filing of any action pursuant to this section shall preclude a criminal prosecution for the same offense, except where the razing or moving has resulted in personal injury.

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The defendant, within twenty-one (21) days after the filing of the petition, shall file an answer and may, without admitting liability, agree to restore the building or structure as it existed prior to demolition, razing, or moving.

(ab) Additional requirements for properties subject to regulation.

- (1) A lot in the R-1A or R-1B district on which a designated structure is located shall not be reduced in size such that it no longer meets the minimum lot size, frontage, and setback requirements of a lot in the R-1A district. A lot existing at the time of designation of the structure which is substandard with respect to the minimum lot size, frontage, or setback requirements of a lot in the R-1A district shall not be further reduced in size, unless any substandard feature remains unaffected.
- (2) A lot on which a designated structure is located shall not be utilized in any calculation of land area required in the R-C, R-TH or R-M district.

This section shall not apply to any designated structure for which a bona fide site plan or building permit has been filed with the city on or before the first reading of this section.